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Miss Rossarin Nuekaew v Public Prosecutor

B COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO K-05–328–11 OF 2014 (THA)
MOHTARUDIN BAKI, TENGKU MAIMUN JJCA AND HARMINDAR SINGH J
24 FEBRUARY 2016

C

Criminal Procedure — Appeal — Appeal against conviction and sentence — Drugs found in bag — Accused had keys to bags — Whether accused had knowledge of drugs — Whether accused had mens rea possession or conscious possession of drugs — Whether defence reasonable and credible — Whether there D *was failure of prosecution to tender into evidence first information report — Whether investigating officer investigate character related by accused in her statement to police — Dangerous Drugs Act 1952, s 39B(1)(a)*

Acting on information received that a certain drug trafficking activity would E take place, SP2 led a raiding party to a bus terminal. SP2 noticed the appellant walking while carrying two bags in each hand ('P29' and 'P30') and a handbag ('P31') slung over her right shoulder. When SP2 and his party approached the appellant and introduced themselves, the appellant immediately dropped P29 and P30 to the floor. The appellant was instructed to open the bags and she F produced a set of keys from P31 and opened the two bags. Inside P29, eight slabs of compressed dried leaves were found and inside P30, 10 slabs of compressed dried leaves were found. Analysis by the chemist confirmed the 18 slabs to be cannabis. The appellant was charged at the High Court for trafficking dangerous drugs, an offence under s 39B(1)(a) of the Dangerous G Drugs Act 1952. At the end of the prosecution's case, the trial judge held that the appellant had mens rea possession or conscious possession of the drugs. The appellant was called to enter defence. The appellant testified that she worked in Pattaya, Thailand and her employer had arranged a trip. The appellant left Bangkok and upon reaching Danok, she was informed by her employer that a H man would arrange for her transport from Danok to the bus station in Changlun, Kedah. Accordingly, a man came by and took the appellant to Changlun on his motorcycle. At the Changlun Bus Station, she was told by the same man to wait in the bus. The man then came back later with a woman wearing a *tudung* and told the appellant that the woman in the *tudung* would I accompany her to Kuala Lumpur. The appellant and the woman in a *tudung* proceeded to the bus until they arrived at the bus terminal. The woman in a *tudung* then gave the appellant a key and alighted from the bus. The bus driver then told the appellant to also get down from the bus. As she was alighting from the bus, the appellant noticed the said woman standing beside the bus and

talking to someone. Next to the said woman were two bags. When the appellant asked the said woman, she was told 'change bus'. Not long after the police came and arrested her. At the conclusion of the trial, the trial judge found that the defence of the appellant was unreasonable and not credible. The appellant was accordingly found guilty, convicted and sentenced to death. Hence, the present appeal. The issues that arose were the failure of the prosecution to tender into evidence the first information report ('FIR'); and failure by the investigating officer to investigate the woman in a *tudung* as related by the appellant in her statement to the police.

Held, dismissing the appeal; affirming the conviction and sentence by the High Court:

(1) The evidence of SP2 was not required by law to be corroborated. In any event, if the report lodged by SP2 was indeed the first information report, the defence was entitled to be supplied a copy of it prior to trial. In this way, the defence would be able to use it to challenge the credibility of the relevant prosecution witnesses. Even assuming that the defence had not asked for the report, they could still challenge SP2 to produce the report during cross-examination as the first information report was admissible under s 108A of the Criminal Procedure Code in addition to ss 145 and 157 of the Evidence Act 1950 (see para 15).

(2) SP2 was not the only witness who testified as to what transpired that day. In fact, his evidence was corroborated by SP3 who was present with SP2 at the time when the appellant was detained. No reason was put forward as to why these police witnesses ought to be disbelieved. In all the circumstances, there was no merit in the appellant's contention that an adverse inference ought to be invoked against the prosecution for failing to produce the first information report. No prejudice had been caused to the appellant (see para 16).

(3) If the appellant's evidence was to be believed, it would then appear that SP2 and the woman in the *tudung* had somehow conspired to entrap her with possession of the two bags. This version seemed quite farfetched as the judge observed since SP2, being a police officer, had no interest in victimising the appellant and especially in the presence of a police party. If the said woman in the *tudung* had anything to do with P29 and P30, it was reasonable to think that the police would have arrested her if they were immediately told about it. It was only later in the police statement that the appellant disclosed the story of the woman in the *tudung* (see paras 19–20).

(4) It was significant that the keys to the bags were in the possession of the appellant. It did not make sense for the woman in the *tudung* to give the keys to the bags to the appellant in the bus when the bags were elsewhere if there was any intention of entrapment. The woman in the *tudung* was a fictitious character created by the appellant to deny possession of P29 and P30 and the keys. The appellant failed to raise a reasonable doubt on the prosecution case (see paras 20–21).

[Bahasa Malaysia summary

Bertindak atas maklumat yang diterima bahawa satu aktiviti pengedaran dadah tertentu akan berlaku, SP2 mengetuai pasukan serbuan ke terminal bas. SP2 mendapati perayu berjalan sambil membawa dua beg di kedua-dua tangannya ('P29' dan 'P30') dan beg tangan ('P31') tersangkut pada bahu kanannya. Apabila SP2 dan pasukannya menghampiri perayu dan memperkenalkan diri, perayu dengan serta-merta menjatuhkan P29 dan P30 ke lantai. Perayu diarahkan untuk membuka beg dan dia mengeluarkan satu set kunci dari P31 dan membuka kedua-dua beg. Di dalam P29, lapan papak daun kering mampat ditemui dan dalam P30, 10 papak daun kering mampat ditemui. Analisis oleh ahli kimia mengesahkan 18 papak dadah jenis ganja. Perayu telah dituduh di Mahkamah Tinggi untuk mengedar dadah berbahaya, suatu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952. Perayu telah dituduh di Mahkamah Tinggi untuk mengedar dadah berbahaya, suatu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952. Di akhir kes pendakwaan, hakim perbicaraan memutuskan bahawa perayu mempunyai mens rea pemilikan atau pemilikan sedar akan dadah. Perayu telah dipanggil untuk membela diri. Perayu memberi keterangan bahawa dia bekerja di Pattaya, Thailand dan majikannya telah mengatur perjalanan. Perayu meninggalkan Bangkok dan apabila tiba di Danok, dia telah dimaklumkan oleh majikannya bahawa seorang lelaki akan mengaturkan pengangkutannya dari Danok ke stesen bas di Changlun, Kedah. Berikutan itu, seorang lelaki datang dan membawa perayu ke Changlun menaiki motorsikalnya. Di Stesen Bas Changlun, dia telah diberitahu oleh lelaki yang sama untuk menunggu di dalam bas. Lelaki itu kemudiannya datang kembali bersama seorang perempuan memakai tudung dan memberitahu perayu bahawa perempuan bertudung itu akan menemaninya ke Kuala Lumpur. Perayu dan perempuan bertudung terus menaiki bas sehingga mereka tiba di terminal bas. Perempuan bertudung itu kemudiannya memberikan perayu satu kunci dan turun daripada bas. Pemandu bas kemudian memberitahu perayu untuk turun juga daripada bas. Sewaktu perayu turun daripada bas, perayu mendapati perempuan tersebut berdiri di sebelah bas dan bercakap dengan seseorang. bersebelahan perempuan tersebut terdapat dua beg. Apabila perayu bertanya kepada perempuan tersebut, dia diberitahu 'change bus'. Tidak beberapa lama kemudian polis tiba dan menangkapnya. Di akhir perbicaraan, hakim perbicaraan mendapati pembelaan perayu adalah tidak munasabah dan tidak boleh dipercayai. Perayu secara wajar telah didapati bersalah, disabitkan dan

dihukum mati. Maka rayuan ini. Isu yang ditumbulkan adalah kegagalan pihak pendakwaan untuk memasukkan ke dalam keterangan laporan maklumat pertama ('LMP'); dan kegagalan pegawai penyiasat untuk menyiasat perempuan bertudung sebagaimana yang diceritakan oleh perayu di dalam kenyataan kepada pihak polis.

Diputuskan, menolak rayuan; mengesahkan sabitan dan hukuman oleh Mahkamah Tinggi:

(1) Keterangan SP2 tidak dikehendaki oleh undang-undang untuk disokong. Dalam apa-apa keadaan, jika laporan yang dilaporkan oleh SP2 sememangnya laporan maklumat pertama, pembelaan berhak untuk diberi suatu salinan pernyataan itu sebelum perbicaraan. Dengan cara ini, pembelaan akan boleh menggunakannya untuk mencabar kebolehpercayaan saksi pendakwaan yang berkaitan. Bahkan dengan menganggap bahawa pembelaan tidak meminta laporan itu, mereka masih boleh mencabar SP2 untuk menghasilkan laporan itu semasa pemeriksaan balas kerana laporan maklumat pertama boleh diterima mengikut s 108A Kanun Tatacara Jenayah selain daripada ss 145 dan 157 Keterangan Akta 1950 (lihat perenggan 15).

(2) SP2 bukan satu-satunya saksi yang memberi keterangan mengenai apa yang berlaku hari itu. Malah, keterangannya telah disokong oleh SP3 yang hadir bersama SP2 pada masa ketika perayu ditahan. Tiada sebab telah dikemukakan mengapa saksi-saksi polis patut tidak boleh dipercayai. Dalam semua keadaan, tidak ada merit dalam hujah perayu bahawa inferens bertentangan patut digunakan terhadap pihak pendakwaan kerana gagal untuk menghasilkan laporan maklumat pertama. Tiada prejudis telah dilakukan atas perayu (lihat perenggan 16).

(3) Jika keterangan perayu dipercayai, ia akan kelihatan bahawa SP2 dan perempuan bertudung entah bagaimana berkomplot untuk memerangkapnya dengan pemilikan dua beg. Versi ini tampak cukup tidak masuk akal sebagaimana yang diamati oleh hakim oleh kerana SP2, yang merupakan seorang pegawai polis, tidak mempunyai kepentingan untuk menganiaya perayu dan terutama dalam kehadiran pasukan polis. Jika perempuan bertudung tersebut mempunyai apa-apa kaitan dengan P29 dan P30, ia adalah munasabah untuk difikirkan bahawa pihak polis akan menangkapnya jika mereka dengan serta merta diberitahu tentang itu. Hanya kemudian di dalam kenyataan polis yang perayu menceritakan mengenai perempuan bertudung (lihat perenggan 19–20).

(4) Adalah penting bahawa kunci beg berada dalam milikan perayu. Ia tidak munasabah untuk perempuan bertudung memberikan kunci kepada beg kepada perayu di dalam bas apabila beg tersebut berada di tempat lain jika terdapat apa-apa niat pemerangkapan. Perempuan yang bertudung itu adalah watak rekaan dicipta oleh perayu untuk menafikan pemilikan

P29 dan P30 dan kunci. Perayu gagal menimbulkan keraguan munasabah terhadap kes pendakwaan (lihat perenggan 20–21).]

Notes

For cases on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (5th Ed, 2015) paras 301–419.

Cases referred to

Anthony Gomez v Ketua Polis Daerah Kuantan [1977] 2 MLJ 24, FC (refd)
Balachandran v PP [2005] 2 MLJ 301, FC (refd)
Chin Khing Siong v Rex [1952] 1 MLJ 74 (refd)
Mat v PP [1963] 1 MLJ 263 (refd)
PP v Abdul Razak bin Johari [1991] 1 MLJ 105, HC (refd)
Tan Cheng Kooi & Anor v PP [1972] 2 MLJ 115 (refd)
Teo Thin Chan & Anor v PP [1957] MLJ 184 (refd)

Legislation referred to

Criminal Procedure Code s 108A
Dangerous Drugs Act 1952 s 2
Evidence Act 1950 ss 114(g), 145, 157

Appeal from: Criminal Trial No 45A-62–10 of 2012 (High Court, Alor Setar).

Mohd Ridzuan bin Muhamad (Fadzli & Co) for the appellant.
Tengku Intan Suraya bt Tengku Ismail (Deputy Public Prosecutor, Attorney General Chamber's) for the respondent.

Harmindar Singh J:

INTRODUCTION

[1] The appellant is a Thai national. She was charged in the High Court at Alor Setar for trafficking in dangerous drugs. The charge was as follows:

> Bahawa kamu pada 9hb Disember 2011 jam lebih kurang 8.15 malam, di bahagian lorong Terminal Bas Shahab Perdana, di dalam daerah Kota Setar, dalam Negeri Kedah Darul Aman telah didapati mengedar dadah berbahaya iaitu cannabis sejumlah berat 16841 gram. Oleh yang demikian kamu telah melakukan satu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

[2] The appellant was found guilty after a trial and sentenced to death on 29

October 2014 by the High Court. An appeal to the Court of Appeal was filed on the same day. The appeal came up for hearing on the 8 December 2015 at the Court of Appeal. After hearing arguments on behalf of the appellant and the respondent, it was unanimously decided that the appeal be dismissed. Our reasons for so deciding now follow.

THE PROSECUTION'S CASE AT THE HIGH COURT

[3] The prosecution's case as revealed by the evidence at the trial can be stated as follows. On 9 December 2011, at about 7pm, Insp Samsualan bin Samsudin ('SP2') received information of drug trafficking by a foreign national in the vicinity of the Shabab Perdana Bus Terminal in Alor Setar. Based on the said information, SP2 then led a raiding party to the said bus terminal. Whilst carrying out observation at the Bus Terminal, at about 8pm, SP2 noticed the appellant walking along lane 6 of the said bus terminal. She was carrying two bags in each hand ('P29' and 'P30') and had a handbag ('P31') slung over her right shoulder.

[4] SP2 and his party then proceeded to approach the appellant and detained her. SP2 had identified to the appellant that he and his party were police officers from the narcotics division. The appellant appeared to be 'cemas dan resah' according to SP2 whereupon she immediately dropped the two bags P29 and P30 to the floor. SP2 found the said two bags to be locked and ordered the appellant to open the bags. At first the appellant refused but when instructed again to do so she produced a set of keys ('P33A-E') from her handbag (P31) and proceeded to open the two bags with the keys.

[5] SP2 then examined the contents of the two bags. Inside bag P29, SP2 found eight slabs of compressed dried leaves ('P10A' – 'P17A'). Inside bag P30 he found ten slabs of compressed dried leaves ('P19A' – 'P28A'). SP2 suspected the slabs of compressed dried leaves to be cannabis. The appellant was arrested and the said exhibits were sent to Jabatan Kimia for analysis. Upon analysis by the chemist, Norleen bt Abdul Manaf ('SP1'), the dried leaves in the 18 slabs were confirmed to be cannabis as defined in s 2 of the Dangerous Drugs Act 1952 ('the Act').

[6] From the aforesaid evidence, the learned trial judge found at the end of the prosecution's case that considering the fact that the appellant was carrying the bags which contained the cannabis and the fact that she also had the keys to the bags which she subsequently opened in the presence of SP2 and his police party, the only inference is that the appellant had custody and control of the cannabis as well as knowledge that the two bags contained the cannabis. In other words, the appellant had mens rea possession or conscious possession of the drugs. Applying s 2 of the Act, the learned judge found that a prima facie

case of trafficking had been made out and ordered the appellant to enter her defence.

THE DEFENCE CASE

[7] The appellant gave evidence on oath. She testified that she worked as a cashier in a hotel in Pattaya, Thailand and her employer named Kai had offered her a holiday in Kuala Lumpur. She claimed that her employer Kai had arranged her whole trip. She said that on 8 December 2011, she left Bangkok by bus and arrived in the town of Danok sometime in the late evening. Upon reaching Danok, she was informed by Kai that a man would arrange for her transport from Danok to the bus station in Changlun, Kedah. Accordingly, a man came by and took the appellant to Changlun on his motorcycle.

[8] At the Changlun Bus Station, she was told by the same man to wait in the bus. The man then came back later with a woman wearing a *tudung* and told the appellant that the woman in the *tudung* would accompany her to Kuala Lumpur. The appellant and the woman in a *tudung* proceeded in the bus until they arrived at the Shahab Perdana Bus Station in Alor Setar. The appellant noticed that all the passengers were alighting from the bus. The same woman in a *tudung* then gave the appellant a key and alighted from the bus. The bus driver then told the appellant to also get down from the bus. As she was alighting from the bus, the appellant noticed the said woman standing beside the bus and talking to someone. Next to the said woman were two bags. When the appellant asked the said woman, she was told 'change bus'. Not long after the police came and arrested her. They also found drugs in the said two bags.

[9] In a nutshell, the appellant's defence was that the two bags P29 and P30 did not belong to her. The key which opened the two bags also did not belong to her but was given to her by the woman in a *tudung*. This meant that her testimony was at odds with the prosecution version which had the appellant carrying the two bags P29 and P30 at the time when she was arrested. The appellant also denied any knowledge of the drugs found in the two bags.

FINDINGS OF THE TRIAL JUDGE

[10] At the conclusion of the trial, the trial judge found that the defence of the appellant was unreasonable and not credible. In short, the learned judge did not believe the testimony of the appellant that the bags did not belong to her. The learned judge observed that it was hard to accept that the appellant could have been travelling from Bangkok with only her handbag. The learned judge also found the version of the appellant that she may have been entrapped by the woman in a *tudung* as being unreasonable and doubtful. Reviewing all the evidence, the learned judge found that the defence had failed to raise a

reasonable doubt on the prosecution case and the prosecution had succeeded in proving the charge beyond reasonable doubt. The appellant was accordingly found guilty, convicted and sentenced to death.

THE INSTANT APPEAL

[11] Although the petition of appeal contained several grounds, before us only two grounds were raised during the hearing as follows:

(a) failure of the prosecution to tender into evidence the first information report; and

(b) failure by the investigating officer to investigate the woman in a *tudung* as related by the appellant in her statement to the police.

FIRST ISSUE: FAILURE TO TENDER FIRST INFORMATION REPORT

[12] On this issue, learned counsel for the appellant submitted that there was non-production of the first information report ('FIR') and as such the learned trial judge ought to have invoked an adverse inference against the prosecution pursuant to s 114(g) of the Evidence Act 1950. It was further submitted that the non-production of the FIR was prejudicial to the appellant in that there was no opportunity for the defence to test the oral testimony of SP2 and SP3. It was further contended that with the absence of the FIR, there was a high probability of SP2 and SP3 not telling the truth especially with regard to who was in possession of the two bags as well as the presence of the woman in the *tudung* and her role in the case.

[13] To support his contention, learned counsel relied on the cases of *Chin Khing Siong v Rex* [1952] 1 MLJ 74 *Tan Cheng Kooi & Anor v Public Prosecutor* [1972] 2 MLJ 115, *Teo Thin Chan & Anor v Public Prosecutor* [1957] MLJ 184 and *Public Prosecutor v Abdul Razak bin Johari* [1991] 1 MLJ 105. However, the Federal Court in *Balachandran v Public Prosecutor* [2005] 2 MLJ 301 had reviewed and clarified the position on this very issue. Speaking for the court, Augustine Paul JCA (as he then was) observed (at p 310):

> The passage just referred to makes it patent that the evidentiary value of a first information report is only to contradict the testimony of a witness under s 145 of the Evidence Act 1950 or to corroborate his testimony under s 157 of the said Act the operation of which is as explained in *Lim Guan Eng v Public Prosecutor* [2000] 2 MLJ 577; [2000] 2 CLJ 541. It is not substantive evidence of its contents. The question that arises for determination, in the circumstances, is whether the failure to adduce in evidence the first information report is capable of an adverse inference being drawn against the prosecution under s 114(g) of the Evidence Act 1950. Where the evidence of a witness does not require to be corroborated in law there is no obligation to tender corroborative evidence to support his testimony. Thus if the case for the prosecution rests solely on the evidence of one witness in such a category

there is no requirement in law for his evidence to be corroborated. Any such requirement will conflict with s 134 of the Evidence Act 1950 which provides that no particular number of witnesses shall in any case be required for the proof of any fact. This means that the testimony of a single witness, if believed, is sufficient to establish any fact (see *Khaw Cheng Bok & Ors v Khaw Cheng Poon & Ors* [1998] 3 MLJ 457).

[14] Nevertheless, the Federal Court in *Balachandran* also cautioned that the need for the first information report may arise in certain circumstances. In this regard it was observed (at p 311):

> It is therefore clear that the need for a first information report to be used to corroborate the testimony of witness depends on the facts and circumstances of each particular case. Where the evidence of a single witness who has made a first information report is vague it is most desirable to tender it in evidence in order to enhance his credibility. That was the basis of the judgment in cases such as *Chin Khing Siong v Rex* [1952] 1 MLJ 74 and *Ooi Hock Leong v Regina* [1955] 1 MLJ 229. Where it is not tendered in evidence in such a situation the evidence of the witness stands to be rejected; not because it lacks corroboration but because it may not pass the test of credibility and reliability on its own. It is only to that extent can it be said that the failure to produce the first information report is fatal. If indeed it contradicts the evidence of a witness it is the duty of the defence to use it in order to attack the credibility of the witness. Where that has not been done it would be a contradiction in terms for the defence to ask for an adverse inference to be drawn against the prosecution for failure to adduce it in evidence. On the contrary the failure of the defence to use it as described may lead to the inference that it is not adverse to the evidence of the witness. The corollary is that an adverse inference cannot be drawn against the prosecution for failure to tender in evidence a first information report and the strength of its case is to be assessed as it stands.

[15] Coming back to the instant case, it was plain that the evidence of SP2 was not required by law to be corroborated. In any event, if the report lodged by SP2 was indeed the first information report, the defence is entitled to be supplied a copy of it prior to trial (see *Anthony Gomez v Ketua Polis Daerah Kuantan* [1977] 2 MLJ 24). In this way, the defence would be able to use it to challenge the credibility of the relevant prosecution witnesses. Even assuming that the defence had not asked for the report, they could still challenge SP2 to produce the report during cross-examination as the first information report is admissible under s 108A of the Criminal Procedure Code in addition to ss 145 and 157 of the Evidence Act 1950 (see *Balachandran*, at p 312). The record of proceedings however show that the defence had taken no such action.

[16] Be that as it may, SP2 was not the only witness who testified as to what transpired that day. In fact, his evidence was corroborated by Det Sjn Major Suhaimi bin Musa ('SP3') who was present with SP2 at the time when the appellant was detained. No reason was put forward as to why these police

witnesses ought to be disbelieved. In all the circumstances, we find no merit in the appellant's contention that an adverse inference ought to be invoked against the prosecution for failing to produce the first information report. We also find that no prejudice has been caused to the appellant in this regard.

SECOND ISSUE: THE FAILURE TO INVESTIGATE THE WOMAN IN THE *TUDUNG*

[17] In this connection, the complaint by the appellant is that there was no investigation carried out with regard to the woman in the *tudung* as related by the appellant to the police. In her testimony, the appellant appeared to suggest that the incriminating bags P29 and P30 belonged to the woman in the *tudung*. She also testified she saw the same woman talking to SP2 before SP2 approached her. Her evidence was as follows:

> Bila sampai di stesyen bas, bas berhenti dan driver bas turun ke bawah. Saya dapati penumpang yang tunggu dibawah mula menaiki bas. Perempuan yang duduk di tepi saya serahkan kunci kepada saya. Sebentar kemudian driver naik semula ke atas bas dan beliau bercakap dalam Bahasa Malaysia yang saya tidak faham. Pemandu bas tersebut serah semula wang kepada perempuan bertudung tadi. Apabila dia terima wang dari pemandu, perempuan bertudung tadi terus turun ke bawah. Saya dapati penumpang-penumpang yang berada di dalam bas mulai turun bersama dengan beg masing-masing. Saya mengikut penumpang yang turun tadi ke bawah. Pada masa itu saya nampak perempuan bertudung tadi sedang bercakap-cakap dengan seorang lelaki dan nampak 2 buah beg berada di tepi perempuan bertudung tersebut. Saya nampak perempuan itu sambil bercakap dan menunjuk ke arah saya. Apabila saya nampak keadaan begitu saya terus menghampirinya dan bertanya kenapa penumpang-penumpang yang lain turun dari bas. Dengan Bahasa isyarat saya berkata why why sambil buat isyarat tangan. Perempuan tadi jawab kepada saya change bus. Lelaki yang bercakap dengan bertudung tadi berjalan melintasi depan perempuan itu dan nampak perempuan melangkah ke belakang ini kerana lelaki itu akan datang ke arah saya, bercakap dengan saya. Lelaki tersebut ada tanya kepada saya, saya berasal dari mana. Saya beritahu saya adalah warganegara Thailand. Dia minta passport saya. Dia beritahu dia adalah seorang anggota polis.

[18] Now it was admitted by the investigating officer SP4 during cross-examination that he did not investigate the allegation of the role of the woman in the *tudung* when he was questioned as follows:

> Q: Dalam kes ini ada maklumat mengatakan seorang perempuan di dalam bas dan turun di Shahab Perdana. Ada kamu buat siasatan tentang perempuan yang ada di dalam bas itu?
>
> A: Tiada.

During re-examination SP4 gave his explanation as to why did not do so in the following fashion:

A

> Q: Peguam ada tanya adakah kamu menjalankan siasatan tentang perempuan bertudung yang turut berada dalam bas dan kamu tidak siasat. Kenapa kamu tidak siasat?
>
> A: Berkaitan maklumat perempuan bertudung tidak dimaklumkan pegawai serbuan sebab itu saya tidak siasat.

B

[19] If the appellant's evidence is to be believed, it would then appear that SP2 and the woman in the *tudung* had somehow conspired to entrap her with possession of the two bags. This version seems quite farfetched as the learned C judge observed since SP2, being a police officer, had no interest in victimising the appellant and especially in the presence of a police party. If the said woman in the *tudung* had anything to do with the bags P29 and P30, it is reasonable to think that the police would have arrested her if they were immediately told about it.

D

[20] For this reason, it is easy to accept SP4's testimony that he was not told by the appellant of any woman in the *tudung* at the time of her arrest. It was only later in the police statement that the appellant disclosed the story of the woman in the *tudung*. It is significant that the keys to the bags were in the E possession of the appellant. It does not make sense for the woman in the *tudung* to give the keys to the bags to the appellant in the bus when the bags were elsewhere if there was any intention of entrapment. To put it simply, it would have been a poor attempt at entrapment.

F

[21] Given the circumstances, we find that the learned judge was right not to believe the testimony of the appellant. It must also follow from the circumstances that the woman in the *tudung* is a fictitious character created by the appellant to deny possession of the two bags P29 and P30 and the keys G ('P31') found on her. We agree with the learned judge's finding that the appellant had failed to raise a reasonable doubt on the prosecution case (see *Mat v Public Prosecutor* [1963] 1 MLJ 263).

CONCLUSION

H

[22] In the circumstances and for the reasons stated, and considering the entirety of the evidence adduced, we were of the view that the conviction against the appellant was safe. In the upshot we unanimously dismissed the appeal and we affirmed the conviction and sentence by the High Court.

I

Appeal dismissed; conviction and sentence by the High Court affirmed

Reported by Afiq Mohamad